

**SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.A.P. 904 and 907

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 904 governing the content of the notice of appeal and Pa.R.A.P. 907 governing the docketing of appeals for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

**Karla M. Shultz, Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9551
appellaterules@pacourts.us**

All communications in reference to the proposal should be received by **August 30, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,

Patricia A. McCullough
Chair

Explanatory Comment

The Appellate Court Procedural Rules Committee is proposing amendment of Pa.R.A.P. 904 governing the content of the notice of appeal and Pa.R.A.P. 907 governing the docketing of appeals to require the parties' names in the caption of custody appeals as they appear on the custody court docket, unless the appellate court determines that, based on the sensitive nature of the facts in the case and the best interest of the child, the initials for the parties' names should be used.

Currently, the Pennsylvania Rules of Appellate Procedure do not require initialization of the parties' names when a custody case is appealed. Rather, Pa.R.A.P. 904(b) requires that when an appeal is taken, the caption should reflect the parties as they appeared in the caption on the record at the trial court. The practice at the trial court does not typically result in the initialization of the parties' names in custody actions. However on appeal, initialization of the parties' names is required by Superior Court Internal Operating Procedure § 424A. It provides:

No circulation or orders of the court, including per curiam decisions, unpublished memoranda, judgment orders and published opinions, shall include the identification of...minors subject to or involved in...custody...proceedings. If information pertaining to other individuals, such as the parents or guardians of the minor, would readily reveal the above-prohibited information, that information shall be redacted. [The court] shall retain the discretion to redact or otherwise protect the privacy interests of any litigants involved....

The result is that the parties' names in the captions of custody appeal are initialized even if no such initialization was done in the trial court caption. Generally, the use of initials of the parties' names in captions is intended to protect the minor child subject to the custody action from identification through the parties' names and embarrassment resulting from sensitive facts being contained in the case record. However, the practice of categorically initializing all custody captions, regardless of the facts contain within the case record, has resulted in an "alphabet soup" of case captions in which differentiating between custody cases has become difficult.

A joint subcommittee of members from the Appellate Court Procedural Rules Committee and the Domestic Relations Procedural Rules Committee, together with representatives of the Superior Court, was formed to evaluate the continuation of this practice. The joint subcommittee recommended that initialization of the parties' names in custody actions is only necessary when the facts in the case record are of a sensitive nature and it is in the child's best interest to circumscribe ascertainment of the child's identity through the parties' names.

To effect the recommendation of the joint subcommittee, the Domestic Relations Procedural Rules Committee is proposing amendments to the Pennsylvania Rules of Civil Procedure that would require the use of the parties' names in the trial court caption unless the case record contains sensitive facts and it is in the best interest of the child to initial the parties' names. The Appellate Court Procedural Rules Committee is proposing an analogue to address captions in custody appeals. Both proposals are being published contemporaneously for comment.

As proposed, paragraph (b)(1) of Pa.R.A.P. 904 would require the parties' names to be initialized in the appeal court caption if they were initialized at the trial court level. If the parties' names were not initialized at the trial court level, paragraph (b)(2) of Pa.R.A.P. 904 provides the appellate court discretion to use the parties' initials in the caption for custody appeals based on the sensitive nature of the facts included in the case record and the best interest of the child. Pa.R.A.P. 907(a) contains a proposed corollary amendment.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this rulemaking proposal.

Rule 904. Content of the Notice of Appeal.

(a) *Form.*—Except as otherwise prescribed by this rule, the notice of appeal shall be in substantially the following form:

COURT OF COMMON PLEAS
OF _____ COUNTY

[A.B.] Party A's full name, Plaintiff:

v.

[C.D.] Party B's full name, Defendant:

Docket or File No. _____
Offense Tracking Number _____

NOTICE OF APPEAL

Notice is hereby given that [C.D.] _____, defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the ____ day of _____ 20___. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

(S) _____

(Address and telephone number)

(b) *Caption.*

(1) General rule.—The parties shall be stated in the caption as they **[stood upon] appeared on** the record of the trial court at the time the appeal was taken.

(2) Appeal of custody action.—**In an appeal of a custody action, an appellate court may exercise its discretion to use the initials of the parties in the caption based upon the sensitive nature of the facts included in the case record and the best interest of the child.**

(c) *Request for transcript.*—The request for transcript contemplated by Pa.R.A.P. 1911 or a statement signed by counsel that either there is no verbatim record

of the proceedings or the complete transcript has been lodged of record shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) *Docket entry.*—The notice of appeal shall include a statement that the order appealed from has been entered on the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) *Content in criminal cases.*—When the Commonwealth takes an appeal pursuant to Pa.R.A.P. 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

(f) *Content in children’s fast track appeals.*—In a children’s fast track appeal, the notice of appeal shall include a statement advising the appellate court that the appeal is a children’s fast track appeal.

Official Note:

The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the Criminal History Record Information Act, 18 Pa.C.S. §§ 9101, *et seq.*

The notice of appeal must include a statement that the order appealed from has been entered on the docket. The appellant does not need to certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

Paragraph (b)(2) provides the authority to initialize captions in custody appeals. See also Pa.R.C.P. 1915.10.

With respect to paragraph (e), in *Commonwealth v. Dugger*, 486 A.2d 382, 386 (Pa. 1985), the Supreme Court held that the Commonwealth’s certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court’s review of the merits of the appeal. The principle in *Dugger* has been incorporated in and superseded by Pa.R.A.P. 311(d). *Commonwealth v. Dixon*, 907 A.2d 468, 471 n.8 (Pa. 2006). Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth’s appellate brief, has been eliminated.

A party filing a cross-appeal should identify it as a cross-appeal in the notice of appeal to assure that the prothonotary will process the cross-appeal with the initial appeal. See *also* Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in cross-appeals and Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

Rule 907. Docketing of Appeal.

(a) *Docketing of appeal.*—Upon the receipt of the papers specified in [Rule] Pa.R.A.P. 905(b) (transmission to appellate court), the prothonotary of the appellate court shall immediately enter the appeal upon the docket, note the appellate docket number upon the notice of appeal, and give written notice of the docket number assignment in person or by first class mail to the clerk of the [lower] trial court, to the appellant and to the persons named in the proof of service accompanying the notice of appeal. **[An appeal shall be docketed under the caption given to the matter in the lower court, with the appellant identified as such, but if such caption does not contain the name of the appellant, his name, identified as appellant, shall be added to the caption in the appellate court.] Unless an appellate court exercises its discretion to use the initials of the parties in an appeal of a custody action, the prothonotary of the appellate court shall docket an appeal under the caption given to the matter in the trial court. The appellant shall be identified in the caption. If the appellant is not identified in the caption of the trial court, the appellant’s name shall be added to the caption in the appellate court.**

(b) *Entry of appearance.*—Upon the docketing of the appeal the prothonotary of the appellate court shall note on the record as counsel for the appellant the name of counsel, if any, set forth in or endorsed upon the notice of appeal, and, as counsel for other parties, counsel, if any, named in the proof of service. The prothonotary of the appellate court shall upon [praecipe] *praecipe* of any such counsel for other parties, filed within 30 days after filing of the notice of appeal, strike off or correct the record of appearances. Thereafter a counsel’s appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.

Official Note:

Paragraph (a).—The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of Subdivision (a) of this rule.

In appeals of custody actions, the appellate court may make a determination that using the parties’ initials in the caption is appropriate based on the sensitive nature of the facts included in the case record and the child’s best interest. See Pa.R.A.P. 904(b)(2).

Paragraph (b).—With regard to [subdivision(b) and] withdrawal of appearance without leave of the appellate court, counsel may nonetheless be subject to trial court supervision

pursuant to Pa.R.Crim.P. 904 (Entry of Appearance and Appointment of Counsel; **[In forma Pauperis]** ***In Forma Pauperis***).

With respect to appearances by new counsel following the initial docketing appearances **[pursuant to Subdivision (b) of this rule]**, please note the requirements of **[Rule Pa.R.A.P. 120]**.